IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant	David Kirchhoff, *et al.*
Application No. 10/797,284	Filing Date: March 10, 2004
Title of Application:	Weight Control System With Meal Plan And Journal
Confirmation No. 2939	Art Unit: 2185
Examiner	Heidi Riviere

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Appeal Brief Under 37 C.F.R. §41.37

Dear Sir:

A Notice of Appeal from the rejection of claims 1-59 and 69-80, all pending claims of U.S. Patent Application No. 10/452,301, being filed herewith, Applicant accordingly files its Appeal Brief in connection with its appeal. A Claims Appendix is submitted herewith, as are Appendices related to evidence previously submitted and decisions related to the case.

Applicant believes that no further fees, Appeal Brief fee in the amount of $510.00 and the Request For Oral Hearing fee in the amount of $1030.00, are due in connection with the filing of this Response. However, if any further fees are due please charge to Deposit Account No. 19-4516.

(i) Real Party In Interest

The real party in interest is WeightWatchers.com, Inc. having an address of 11 Madison Avenue, 17th Fl.; New York, NY 10010 assignee of the present patent application.

(ii) Related Appeals and Interferences

There are no related appeals, interferences or judicial proceedings known to Appellant, the Appellant's legal representative, or Assignee which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(iii) Status Of Claims

Claims 1-59 and 69-80, all pending claims of the present application, stand rejected and are the subject of the instant Appeal. Claims 60-68 have been cancelled. A copy of each of these claims is attached hereto in the Claims Appendix.

(iv) Status Of Amendments

There are no pending or unentered Amendments. On July 9, 2007 a first Office Action was issued. Appellant responded to the July 9, 2007 Official Action by amending claims 16, 17, 27, 39, 43, 49, 55 and 73; and cancelling claims 60-68. The amendment to the claims was acknowledged, entered and addressed in a Final Office Action dated February 25, 2008 from which the Appellant now appeals.

(v) Summary Of Claimed Subject Matter

Claims 1, 7, 36, 49, 69 and 73 are independent claims.

Independent Claim 1

Claim 1 is directed toward a system for facilitating the control of body weight of a person where the system comprises a processor operable to execute software that maintains a meal plan for the person. (Pars. 53, 67, 73, 83-84, 87, 90, 93, 104-105, 108 & 111-113; FIGS. 2 & 3) The system also includes a memory unit operable to store data associated with the meal plan, (Pars. 40-41 & 47; FIG. 3) and an input/output device operable to provide an interface for the person to operate the software and receive an updated body weight from the person. (Pars. 31, 40, 47, 52, 56 & 71; FIG. 2) The system further includes a display operable to present the meal plan to the person, the meal plan being automatically altered by the processor based on the updated body weight. (Pars. 109, 122 & 124-125; FIGS. 2, 14, 15A-15B)

Independent Claim 7

Claim 7 is directed toward a method for facilitating the control of body weight of a person comprising the steps of receiving an initial body weight of the person, (Pars. 53, 67, 73, 83-84, 87, 90, 93, 104-105, 108, 111-113 & 124; FIGS. 2 & 3) and determining a target food consumption plan for the person based at least in part on the initial body weight. (Pars. 106, 124-125; FIGS. 14, 15A-15B) The method further comprises the steps of receiving an updated weight of the person, (Pars. 31, 47, 52, 56, 71, 109, 122, 124, 127-128, 133) and automatically altering the target food consumption plan for the person based at least in part on the updated weight of the person. (Pars. 109, 122 & 124-125; FIGS. 2, 14, 15A-15B)

Independent Claim 36

Claim 36 is directed toward a system for facilitating the control of body weight of a person and comprises means for receiving an initial body weight of the person, (Pars. 53, 67, 73, 83-84, 87, 90, 93, 104-105, 108, 111-113 & 124; FIGS. 2 & 3) and means for determining a target food consumption plan for the person based at least in part on the initial body weight. (Pars. 106, 124-125; FIGS. 14, 15A-15B) The system also includes means for receiving an updated weight of the person, (Pars. 31, 47, 52, 56, 71, 109, 122, 124, 127-128, 133) and means for automatically altering the target food consumption plan for the person based at least in part on the updated weight of the person. (Pars. 109, 122 & 124-125; FIGS. 2, 14, 15A-15B)

Independent Claim 48

Claim 48 is directed toward a computer-readable medium having stored thereon sequences of instructions, the sequences of instructions including instructions, when executed by a processor, cause the processor to receive an initial body weight of the person, (Pars. 53, 67, 73, 83-84, 87, 90, 93, 104-105, 108, 111-113 & 124; FIGS. 2 & 3) and determine a target food consumption plan for the person based at least in part on the initial body weight. (Pars. 106 & 124-125; FIGS. 14, 15A-15B) The processor further receives an updated weight of the person, (Pars. 31, 47, 52, 56, 71, 109, 122, 124, 127-128 & 133) and automatically alters the target food consumption plan for the person based at least in part on the updated weight of the person. (Pars. 109, 122 & 124-125; FIGS. 2, 14, 15A-15B)

Independent Claim 49

Claim 49 is directed toward a method for managing data utilized by an online personalized weight control program comprising steps of receiving identification of a user, (Pars. 53, 67, 73, 83-85, 87, 90, 93, 104-105, 108, 111-113 & 124; FIGS. 2 & 3) and receiving an initial profile representative of characteristics of a user including a

weight of the user. (Pars. 48, 53, 66-68, 85, 90, 111 & 124) The method also comprises the steps of forming a dataset based on the initial profile associated with the user, the dataset including a meal plan based in part on the weight of the user, (Pars. 40, 47, 53; FIGS. 6 & 8) and providing a plurality of interoperable selectable weight control elements for access by the user to personalize the dataset. (Pars. 53; FIGS. 4 & 5) The method further comprises the steps of receiving data associated with the weight control elements including an updated weight of the user, (Pars. 31, 47, 52, 56, 71, 109, 122, 124, 127-128 & 133) and updating the dataset in accordance with the received data such that the meal plan is altered based in part on the updated weight of the user. (Pars. 54; FIGS. 6 & 7) The method still further comprises the step of storing the updated dataset, the updated dataset being utilized by the user to follow a personalized weight control program. (Pars. 47 & 54; FIGS. 3, 6 & 7)

Independent Claim 69

Claim 69 is directed toward a system for facilitating control of body weight of a person comprising a computing device operable to execute a software program having a plurality of software elements operable to facilitate control of body weight of the person, (Pars. 53, 67, 73, 83-84, 87, 90, 93, 104-105, 108, 111-113 & 124; FIGS. 2 & 3) the software elements operable to facilitate control of body weight of the person utilizing at least two sources of input, (Pars. 93, 103 & 115-117; FIGS. 14, 15A-15B) a first input source being a planned set of food items to be consumed based on a current weight of the person (Pars. 93, 103 &115-117; FIGS. 14, 15A-15B) and a second input source being an actual set of food items consumed by the person, (Pars. 106-107 & 115-117; FIG. 14) the software elements further operable to receive updated weight of the person to alter the planned set of food items for future food item consumption. (Pars. 31, 47, 52, 56, 71, 109, 122, 124-125, 127-128, 133; FIGS. 2, 14, 15A-15B)

Independent Claim 73

Claim 73 is directed toward a system for facilitating the control of body weight of a person comprising a processor operable to execute software that maintains a meal plan for the person, (Pars. 53, 67, 73, 83-84, 87, 90, 93, 104-105, 108, 111-113 & 124; FIGS. 2 & 3) and a memory unit operable to store data associated with the meal plan. (Pars. 40-41 & 47; FIG. 3) The system further comprises an input/output device operable to provide an interface for the person to operate the software, (Pars. 31, 40, 47, 52, 56 & 71; FIG. 2) and a display operable to present the meal plan to the person, (Pars. 42, 44; FIG. 2) the meal plan being displayed in a multi-day format and including a user selectable indicium operable to be utilized by the person in order to display the meal plan for a particular one of the days displayed in the multi-day format. (Pars. 111, 115-118; FIGS. 14, 15A-15B)

(vi) Grounds Of Rejection To Be Reviewed On Appeal

Claims 1-5, 7-16, 18-34, 38-42, 44-45, 48-50, 53-54, 57, 59-61, 63-64, 69-71, 74 and 76-80 stand rejected under 35 U.S.C. §102(e), as anticipated by U.S. Patent Application Publication No. 2002/0027164 (Mault-164).

Claims 6, 35, 37, 43, 46-47, 52, 55-56, 58, 72-73 and 75 stand rejected under 35 U.S.C. §103(a), as being unpatentable over Mault-164 in view of U.S. Patent Application Publication No. 2002/0062069 (Mault-069).

(vii) Argument

Claims 1, 7, 36, 48-49, 69 and 74

Claim 1 recites "an input/output device operable to provide an interface for the person to operate the software and receive an updated body weight from the person" and "a . . . meal plan being automatically altered by the processor based on the updated body weight." Claims 7 and 36 recite "determining a target food consumption plan for the person based at least in part on the initial body weight" and "automatically altering the target food consumption plan for the person based at least in part on the updated weight of the person." Claim 48 recites "determine a target food consumption plan for the person based at least in part on the initial body weight . . . receive an updated weight of the person" and "automatically alter the target food consumption plan for the person based at least in part on the updated weight of the person." Claim 49 recites "receiving . . . a weight of the user . . . forming a dataset based on the initial profile associated with the user, the dataset including a meal plan based . . . on the weight of the user . . . receiving . . . an updated weight of the user" and "the meal plan is altered based in part on the updated weight of the user." Claim 69 recites "a planned set of food items to be consumed based on a current weight of the person" and "software elements further operable to receive updated weight of the person to alter the planned set of food items for future food item consumption." Claim 74 recites the "system according to claim 73, wherein the input/output device is further operable to receive an updated body weight from the person, and wherein the meal plan is automatically altered by the processor based on the updated body weight."

Accordingly, claims 1, 7, 36, 48-49, 69 and 74 are all directed toward a system that receives an initial weight of a user, a food plan that limits the total amount of calories a user should intake on a daily basis is provided, and as the user losses weight and thereby updates their total weight in the system, the system automatically alter the food consumption allowed to the user.

In rejecting these claims, the Examiner has submitted that "Mault-164 in paragraphs 57, 87 and 98 teach a shopping list is "generated automatically based on some or all of the following: usual purchase habits, dietary needs, previous purchase informa-

tion, diet log information . . . [t]he PDA may suggest complete, nutritionally balanced meals to the person"; message sent to client advising not to complete meal to remain on diet program; "Failure to reach weight goals may be used to modify food orders placed by the PDA". Therefore, rejection has not been withdrawn." (Official Action 2/25/08, p. 2) Appellant respectfully disagrees with the Examiner's conclusions.

In reviewing paragraph 57, Mault-164 describes a method for "creating a shopping list" that may be "generated automatically based on . . . diet log information and purchase information (the combination of which enables an estimation of when a food will run out)." (Par. 57) Mault-164 further states that the "PDA may suggest complete, nutritionally balanced meals to the person, then use the chosen meals to generate a shopping list based on the meals chosen." (*Id.*) Finally, Mault-164 states that the "diet log and previous purchase information allows the existence of currently owned items to be determined and removed from the shopping list. The PDA may question the person on whether previously purchased items (such as perishables) are still available and usable." (*Id.*) Therefore, at most, paragraph 57 discloses that a shopping list may be generated and that a PDA may generate a shopping list that is takes into consideration an individuals preferences taking into consideration what food stuffs an individual may already have at home. Nowhere is the concept that a food plan (based on a user's weight) is altered based on an updated weight of the user disclosed or taught.

In reviewing paragraph 87, Mault-164 describes the "advantage of having the diet business employee create the diet log" because the employee will provide "less biased estimates of portion sizes" and "the diet log can be created quickly and with little effort on the part of the person." This portion of Mault-164 describes having a real person on the other end of a communication from the user to provide the user with advice and to keep track of what the user is actually consuming. For example, Mault-164 states that "the person enters a restaurant, chooses a food plate item from the menu" and that an "image of the delivered food is . . . captured." (Par. 87) The image is "transmitted via a wireless Internet connection to a remote server" and then an "employee of the diet busi-

ness with access to the remote server then generates a diet log entry for the person in the restaurant." (*Id*.) The employee may then provide advice to the user "not to complete the meal in order to remain on a diet program." (*Id*.) While the Examiner has specifically pointed to this section of Mault-164 to teach that the system automatically adjusts a target calorie intake for the user, this is simply not true. This portion of Mault-164 teaches that an employee makes a recommendation after reviewing what the user has submitted. Also, Appellant notes that this feature of Mault-164 has nothing to do with creating the shopping list described in paragraph 57.

Finally, in reviewing paragraph 98, Mault-164 again describes using a "PDA . . . to prepare shopping lists, or to order goods and services over a communications network." (Par. 98) Again, Mault-164 describes there are a number of ways an individuals shopping list may be generated, but then goes on to state that "Failure to reach weight goals may be used to modify food orders placed by the PDA, e.g. with a store, on-line business, diet plan food retailer, etc." So, while Mault-164 discloses that a shopping list may be adjusted if an individual does not achieve a weight goal, nowhere does Mault-164 disclose that a system automatically adjusts, for example, a target calorie intake for the user based on updated weight data. For example, it is contemplated that as a user loses weight, the system as presently claimed, adjusts the calorie intake for the user. Mault-164 on the other hand, suggests that a shopping list may be adjusted if a user doesn't reach weight goals. There is no disclosure that the system performs any type of automatic adjustment based on updated weight information of the user.

Accordingly, because Mault-164 does not disclose each and every limitation of claims 1, 7, 36, 49 and 69, Mault-164 can not anticipate these claims. *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

Appellant further respectfully submits that claims 1, 7, 36, 48-49, 69 and 74 are not obvious. A rationale to support a conclusion that a claim would have been obvious

is that all the claimed elements were known in the prior art and one skilled in the art could have combined the elements as claimed by known methods with no change in their respective functions, and the combination would have yielded nothing more than predictable results to one of ordinary skill in the art. *KSR International Co. v. Teleflex Inc.*, 550 U.S. ___, ___, 82 USPQ2d 1385, 1395 (2007); *Sakraida v. AG Pro, Inc.*, 425 U.S. 273, 282 (1976). In the present case, Mault-164 fails to disclose or teach a system that automatically adjusts a target food consumption for the user based on updated weight information of the user.

Additionally, claims claims 1, 7, 36, 48-49, 69 and 74 all recite a food plan being <u>automatically</u> altered by the processor based on an updated body weight. Mault-164 specifically teaches that the "authorized people . . . may access the data" to provide feedback. (Para. 74) Accordingly, while customized feedback may be provided to a user, the feedback is based on review by <u>live personnel</u> of the data provided by the user. Nowhere does Mault-164 disclose or teach automatic alteration of a food plan based on inputted data. Accordingly, Applicant respectfully submits that not only does Mault-164 fail to teach a meal plan being automatically altered by the system, but actually teaches away from this limitation.

Appellant further respectfully submits that the Examiner's rejection of claim 74 as anticipated by Mault-164 is inappropriate. For example, claim 74 depends from claim 73 and necessarily includes all the limitations of claim 73. However, the Examiner has stated with respect to claim 73 that "Mault-164 does not teach . . . *a display operable to present the meal plan to the person, the meal plan being displayed in a multi-day format and including a user selectable indicium operable to be utilized by the person in order to display the meal plan for a particular one of the days displayed in the multi-day format.*"

Accordingly, as claim 74 includes all the limitations of claim 73, claim 74 cannot be anticipated by Mault-164.

Claim 73

Claim 73 recites "a display operable to present the meal plan to the person, the meal plan being displayed in a multi-day format and including a user selectable indicium operable to be utilized by the person in order to display the meal plan for a particular one of the days displayed in the multi-day format."

The Examiner has submitted that while Mault-164 does not teach this limitation, Mault-069 does teach this limitation at "Figs. 11A, 11B and Fig. 20 – diet information can be displayed for the day or the week." (Official Action 2/25/08, p.21) The Examiner further states that one "of ordinary skill in the art would understand that Mault-164 relates to a weight management system" that "provides monitoring of consumption allowing a client to enter information into a diet log and personal information into the system regarding their weight." (*Id.*) The Examiner further submits that "[c]lients are provided a shopping list which is "generated automatically based on some or all of the following: usual purchase habits, dietary needs, previous purchase information, diet log information . . . [t]he PDA may suggest complete, nutritionally balanced meals to the person." (paragraph 57). Mault-069 provides diet information in the form of caloric intake and meal information. This information can be displayed on the basis of a day or a week." (*Id.*)

First, Appellant notes that it appears the first basis the Examiner relies on to support the combination of references is that they are analogous art. The second basis provided by the Examiner for the combination and modification the Examiner asserts is that the system of Mault-164 "provides monitoring of consumption allowing a client to enter information into a diet log and personal information into the system regarding their weight." (*Id.*) Even if this were so, which Appellant disputes, there is no articulated reason given by the Examiner as to why one would modify Mault-164 according to the presently pending claims. Appellant respectfully submits that "there must be some articulated reasoning with some rational underpinning to support the legal conclusion of ob-

viousness." *KSR Int'l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1741 (2007)(quoting *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006). Appellant further respectfully submits that it is incumbent upon the Examiner to establish the factual basis to support the legal conclusion of obviousness. *See In re Fine*, 837 F.2d 1071, 1073 (Fed. Cir. 1988). In this case, the Examiner has merely listed various non-related features from the cited references and provided no reasoned basis as to why the combination and modification would be obvious.

Accordingly, Appellant respectfully submits that claim 73 cannot be obvious in view of the references cited by the Examiner.

Conclusion

For the foregoing reasons, Applicant respectfully submits that the claimed invention embodied in each of claims 1-59 and 69-80 is patentable over the cited prior art. As such, Appellant respectfully requests that the rejections of each of claims 1-59 and 69-80 be reversed and the Examiner be directed to issue a Notice of Allowance allowing each of claims 1-59 and 69-80.

Respectfully submitted,

June 20, 2008   /Wesley W. Whitmyer, Jr./
                          Wesley W. Whitmyer, Jr., Registration No. 33,558
                          Steven B. Simonis, Registration No. 54,449
                          Attorneys for Applicant
                          ST. ONGE STEWARD JOHNSTON & REENS LLC
                          986 Bedford Street
                          Stamford, CT 06905-5619
                          203 324-6155

**Claims Appendix
to Appeal Brief Under 37 CFR §41.37
Serial No. 10/797,284**

1.   (original) A system for facilitating the control of body weight of a person, said system comprising:

a processor operable to execute software that maintains a meal plan for the person;

a memory unit operable to store data associated with the meal plan;

an input/output device operable to provide an interface for the person to operate the software and receive an updated body weight from the person; and

a display operable to present the meal plan to the person, the meal plan being automatically altered by the processor based on the updated body weight.

2.   (original) The system according to claim 1, further comprising:

a network coupled to the system; and

wherein the input/output unit is operable to communicate the data associated with the meal plan across the network.

3.   (original) The system according to claim 2, wherein the network is the Internet.

4.   (original) The system according to claim 1, wherein the software being executed by the processor is further operable to generate the meal plan based on characteristics associated with the person.

5.   (original) The system according to claim 4, wherein the characteristics include demographics.

6.   (original) The system according to claim 1, wherein the display periodically or from time to time presents to the person a reminder to enter the updated body weight.

7.   (original) A method for facilitating the control of body weight of a person, said method comprising:

receiving an initial body weight of the person;

determining a target food consumption plan for the person based at least in part on the initial body weight;

receiving an updated weight of the person; and

automatically altering the target food consumption plan for the person based at least in part on the updated weight of the person.

8.   (original) The method according to claim 7, wherein said determining a target food consumption plan includes:

determining a range of values based at least in part on the initial body weight of the person; and

selecting food for the person to consume on a daily basis based on the range of values.

9.   (original) The method according to claim 7, further comprising selecting a meal plan from a predetermined set of foods.

10.   (original) The method according to claim 9, wherein the predetermined set of foods is composed of a pre-established set of foods and a user supplied set of foods.

11.   (original) The method according to claim 10, wherein the pre-established set of foods include foods prepared by consumer restaurants.

12.   (original) The method according to claim 10, wherein the pre-established set of foods include branded foods.

13.   (original) The method according to claim 9, wherein at least some of the predetermined set of foods are meals.

14.   (original) The method according to claim 7, further comprising communicating a message to the user based on the updated weight of the person.

15.   (original) The method according to claim 14, wherein the message provides at least one of the following: congratulations, encouragement, suggestions, warnings, and feedback information.

16.   (previously presented) The method according to claim 7, further comprising:
        providing a user selectable indicium operable to be utilized by the person in times of weight control difficulty;
        receiving a notification upon the user selectable indicium being selected by the person; and
        providing the person at least one selectable element associated with underlying information.

17.   (previously presented) The method according to claim 16, wherein the user selectable indicium is a panic button.

18.   (original) The method according to claim 16, wherein the at least one selectable element is a hyperlink.

19.   (original) The method according to claim 7, further comprising receiving at least one of height and age of the person.

20.   (original) The method according to claim 7, further comprising receiving demographical information associated with the person.

21.   (original) The method according to claim 20, further comprising altering the target food consumption plan of the person based on the demographical information associated with the person.

22.   (original) The method according to claim 20, wherein the demographical information includes at least one of the following: gender, race, and ethnicity.

23.   (original) The method according to claim 20, wherein said determining of the target food consumption plan is further based at least in part on the demographical information associated with person.

24.   (original) The method according to claim 7, wherein said determining of the target food consumption plan is based on decreasing weight of the person.

25.   (original) The method according to claim 7, wherein said determining of the target food consumption plan is based on maintaining weight of the person.

26.   (original) The method according to claim 7, wherein said determining of the target food consumption plan is based on increasing weight of the person.

27.   (previously presented) The method according to claim 7, further comprising:
       providing indicium of selectable activities for the person to engage; and
       receiving a selection of at least one selectable activity from the user.

28.   (original) The method according to claim 27, further comprising utilizing the selection to alter the amount of consumable food to satisfy the target consumption plan.

29.   (original) The method according to claim 27, further comprising altering the target food consumption plan of the person based on the selection.

30.   (original) The method according to claim 7, wherein said automatically altering the target food consumption plan is performed by a computing device.

31.   (original) The method according to claim 30, wherein the computing device is a hand-held computing device.

32.   (original) The method according to claim 7, further comprising communicating the altered food consumption plan across a network.

33.   (original) The method according to claim 7, further comprising receiving at least one other characteristic of the person.

34.   (original) The method according to claim 33, wherein said determining of the target food consumption plan for the person is additionally based on the at least one other characteristic.

35.   (original) The method according to claim 7, further comprising reminding the person periodically or from time to time to enter the updated weight of the person.

36.   (original) A system for facilitating the control of body weight of a person, said method comprising:

    means for receiving an initial body weight of the person;

    means for determining a target food consumption plan for the person based at least in part on the initial body weight;

    means for receiving an updated weight of the person; and

means for automatically altering the target food consumption plan for the person based at least in part on the updated weight of the person.

37.   (original) The system according to claim 36, further comprising means for selecting a meal plan from a predetermined set of foods.

38.   (original) The system according to claim 36, further comprising means for communicating a message to the user based on the updated weight of the person.

39.   (previously presented) The system according to claim 36, further comprising:
        means for providing a user selectable indicium operable to be utilized by the person in times of weight control difficulty;
        means for receiving a notification upon the user selectable indicium being selected by the person; and
        means for providing the person at least one selectable element associated with underlying information, suggestions, and commentary.

40.   (original) The system according to claim 36, further comprising means for receiving demographical information associated with the person.

41.   (original) The system according to claim 40, further comprising means for altering the target food consumption plan of the person based on the demographical information associated with the person.

42.   (original) The system according to claim 40, wherein the target food consumption plan is further based at least in part on the demographical information associated with person.

43.   (previously presented) The system according to claim 36, further comprising:

means for providing indicium of selectable activities for the person to engage; and

means for receiving a selection of at least one selectable activity from the user.

44.   (original) The system according to claim 43, further comprising means for utilizing the selection to alter the amount of consumable food to satisfy the target consumption plan.

45.   (original) The system according to claim 43, further comprising means for altering the target food consumption plan of the person based on the selection.

46.   (original) The system according to claim 36, further comprising means for receiving at least one other characteristic of the person, said means for determining the target food consumption plan further basing the target food consumption plan on the at least one other characteristic.

47.   (original) The system according to claim 36, further comprising means for reminding the person periodically or from time to time to enter the updated weight of the person.

48.   (original) A computer-readable medium having stored thereon sequences of instructions, the sequences of instructions including instructions, when executed by a processor, cause the processor to:

receive an initial body weight of the person;

determine a target food consumption plan for the person based at least in part on the initial body weight;

receive an updated weight of the person; and

automatically alter the target food consumption plan for the person based at least in part on the updated weight of the person.

49.   (previously presented) A method for managing data utilized by an online personalized weight control program, said method comprising:

       receiving identification of a user;

       receiving an initial profile representative of characteristics of a user including a weight of the user;

       forming a dataset based on the initial profile associated with the user, the dataset including a meal plan based in part on the weight of the user;

       providing a plurality of interoperable selectable weight control elements for access by the user to personalize the dataset;

       receiving data associated with the weight control elements including an updated weight of the user;

       updating the dataset in accordance with the received data such that the meal plan is altered based in part on the updated weight of the user; and

       storing the updated dataset, the updated dataset being utilized by the user to follow a personalized weight control program.

50.   (original) The method according to claim 49, wherein the interoperable selectable weight control elements include at least one of food and exercise items.

51.   (original) The method according to claim 49, wherein said forming of the dataset is a function of a predetermined set of rules operable to control weight.

52.   (original) The method according to claim 49, wherein the dataset includes predetermined meals each having a total food value associated therewith.

53.   (original) The method according to claim 49, wherein said updating is performed automatically.

54.   (original) The method according to claim 49, wherein the interoperable selectable weight control elements include a journal interface operable to provide a daily listing of foods for consumption in accordance with the personalized weight control program.

55.   (previously presented) The method according to claim 54, wherein the foods are alterable to establish a different daily listing of foods for consumption.

56.   (original) The method according to claim 54, further comprising crediting future daily listings based on a total food value of the daily listing being below a target value.

57.   (original) The method according to claim 56, wherein the target value is a maximum number of values as a function of food consumption and activities allotted by the weight control program.

58.   (original) The method according to claim 56, wherein said crediting is performed for a predetermined number of days.

59.   (original) The method according to claim 49, wherein said updating of the dataset is performed by a computing device in communication with a network.

60.-68.   (cancelled)

69.   (original) A system for facilitating control of body weight of a person, said system comprising a computing device operable to execute a software program having a plurality of software elements operable to facilitate control of body weight of the person, the software elements operable to facilitate control of body weight of the person utilizing at least two sources of input, a first input source being a planned set of food items to be consumed based on a current weight of the person and a second input source being an actual set of food items consumed by the person, the software elements further

operable to receive updated weight of the person to alter the planned set of food items for future food item consumption.

70.   (original) The system according to claim 69, wherein the software elements are further operable to facilitate control of body weight of the person utilizing a third source of input being actual activities performed by the person.

71.   (original) The system according to claim 70, wherein one software element is a journal operable to maintain information associated with the input sources.

72.   (original) The system according to claim 69, wherein the software elements are operable to compute a food consumption value to be consumed based on food values associated with the actual food items consumed by the person.

73.   (previously presented) A system for facilitating the control of body weight of a person, said system comprising:

        a processor operable to execute software that maintains a meal plan for the person;

        a memory unit operable to store data associated with the meal plan;

        an input/output device operable to provide an interface for the person to operate the software; and

        a display operable to present the meal plan to the person, the meal plan being displayed in a multi-day format and including a user selectable indicium operable to be utilized by the person in order to display the meal plan for a particular one of the days displayed in the multi-day format.

74.   (original) The system according to claim 73, wherein the input/output device is further operable to receive an updated body weight from the person, and wherein the meal plan is automatically altered by the processor based on the updated body weight.

75.   (original) The system according to claim 74, wherein the display periodically or from time to time presents to the person a reminder to enter the updated body weight.

76.   (original) The system according to claim 73, further comprising a network coupled to the system, and wherein the input/output unit is operable to communicate the data associated with the meal plan across the network.

77.   (original) The system according to claim 76, wherein the network is the Internet.

78.   (original) The system according to claim 77 wherein the user selectable indicia comprises a hyperlink.

79.   (original) The system according to claim 73, wherein the software being executed by the processor is further operable to generate the meal plan based on characteristics associated with the person.

80.   (original) The system according to claim 79, wherein the characteristics include demographics.

**Evidence Appendix
to Appeal Brief Under 37 CFR §41.37
Serial No. 10/797,284**

No evidence of any kind, including evidence submitted under 37 CFR 1.130, 1.131 or 1.132, has been entered by the Examiner and relied upon by Appellant in the appeal.

**Related Proceedings Appendix
to Appeal Brief Under 37 CFR §41.37
Serial No. 10/797,284**

There are no decisions or pending related appeals and interferences per 37 CFR 41.37 (c)(1)(x).